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out a more logical result. As illustrated in a late case in the Texas Court of Civil Appeals, they hold that where a carrier uses all reasonable means to fill the places of striking workmen, and is prevented from forwarding freight only by the violent acts of the strikers, it is not liable for the delay. *Sterling* v. *St. Louis, etc., R. R. Co.*, 86 S. W. Rep. 655. Since the courts reach this result without adequately distinguishing the cases involving strikes without violence, it seems to constitute a tacit disapproval of the doctrine of those cases.

TROVER FOR CONVERTED MONEY. — The rule of law which allows the owner of stolen property to succeed in an action of trover against a *bona fide* purchaser for value [1] must be qualified by exceptions in the cases of money and negotiable securities payable to bearer. It seems in these cases to be accepted law that a *bona fide* transferee is not liable, either in trover or in any other form of action, provided that he has in the technical sense given value for the securities or money.[2] That the reason for the exception is obscure is evidenced by a recent decision of the Supreme Court of Indiana, which held, opposing the authorities, that where the maker of a note took it up with stolen money at a bank to which the payee's bank had forwarded it, the payee was liable in trover for the amount, though the money was received in ignorance of the theft, and the facts afforded evidence of value under the Indiana law. *Porter* v. *Roseman*, 74 N. E. Rep. 1105.

The well-established exception made in the case of money and securities has been usually based on the ground of public policy, — that it would be a very serious hindrance to the conduct of business if negotiable securities, and above all, money, did not carry a clear title to a *bona fide* transferee.[3] A more satisfactory line of reasoning, perhaps, is suggested by the theory of a German scholar, Prof. Heinrich Brunner, who argues that paper on its face payable to bearer, such as bank-notes and government certificates, passes title to its holder, who, by virtue of his very possession, being the bearer, becomes the legal owner, no matter how he may have come by the paper.[4] Though the theory is not in terms extended to coined money, the same must be true in that case, since the stamp of the government on a coin is a guarantee to the bearer, as such, of its value. If this is true, the action of trover would not be a proper one even against the thief. When, however, the bearer is a wrong-doer, he has in equity no right to keep either paper or coined money, and should be held a constructive trustee for the real owner. In allowing trover against the guilty holder of such a title, but denying redress against one who has acquired title in good faith, and is hence bound by no constructive trust, the courts seem unwittingly to have allowed an equitable remedy, with its characteristic equitable limitations, under the forms of a common law action.[5]

PRESUMED DEDICATION OF A JUS SPATIANDI. — The unorganized public as such is incapable of acquiring interests in realty by deed; consequently,

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[1] White *v.* Spettigue, 13 M. & W. 603.
[2] Nassau Bank *v.* National Bank of Newburgh, 159 N. Y. 456; Wheeler *v.* King, 35 Hun (N. Y.) 101.
[3] Miller *v.* Race, 1 Burr. 452. [4] 2 Endemann, Handbuch 163.
[5] *Cf.* cases cited in Ames, Cases on Trusts, 2d ed., 10, n. 2.

where the legal fiction of a lost grant persists, the public cannot, strictly speaking, take by a prescriptive right.[1] This reasoning is recognized in England, since the Prescription Act of William IV. is held not to extend to easements in gross.[2] In that country, too, dedication to public purposes is yet in its infancy. Highways, bridges and squares are of course subjects of express dedication, and from adverse public user, generally for the period of the Statute of Limitations, English courts sometimes draw an inference of dedication or of condemnation by the proper authorities.[3] To find an actual dedication for purposes other than those mentioned, they demand strong evidence,[4] and the assertion is made, moreover, that from user merely for purposes of recreation and instruction, no right can be gained by the public.[5] This statement of the law was affirmed by a recent English case which denied to the public any right in the grounds covered by the ancient monuments at Stonehenge. *Attorney-General* v. *Antrobus*, [1905] 2 Ch. 188. The road through private property to the stones was also said not to be a highway, but to be accessory to the monuments and dependent upon the same principles as the *jus spatiandi* in their neighborhood.[6]

In this country courts are much more ready than in England to find actual dedication.[7] It is also quite generally held that adverse user for the statutory period raises a conclusive presumption of dedication.[8] To this process the term prescription is often loosely applied. Indeed, where the analogy to the Statute of Limitations is adopted as the basis of prescription, the presumption of a grant or of dedication becomes unnecessary, and the term is perhaps properly applicable. In American as well as in English courts it has been stated that nothing but highways and the like can be acquired by adverse public user.[9] It is argued in support of this contention, first, that landowners should be encouraged in allowing access to private grounds attractive in themselves or by reason of some monument thereon,[10] and second, that the user by the public is permissive and with no claim of right.[11] These two considerations seem to apply indifferently to all prescription, and to furnish no ground for a distinction. The second of them constitutes always a question of fact, but in the case of private prescription where there is found a twenty years' user without license, the court seldom appears to require explicit evidence as to the state of mind of the landowner or the trespasser.

Whether an easement is for pleasure or for profit or whether a road is a highway or ends in public or in private property[12] appears on theory to be unimportant when adverse user for the prescriptive period is found. The

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1 Washburn, Easements § 404; see Pittsburgh, etc., Ry. Co. *v.* Town of Crown Point, 150 Ind. 536.

2 Shuttleworth *v.* Le Fleming, 19 C. B. (N. S.) 687.

3 Board of Works *v.* Maudslay, L. R. 5 Q. B. 397; Queen *v.* Inhabitants, 11 Q. B. 877.

4 Tyne Improvement Commrs. *v.* Imrie, 81 L. T. R. 174.

5 See Bourke *v.* Davis, 44 Ch. D. 110; Giant's Causeway Case, summarized in 32 Ir. L. T. 211.

6 See Campbell *v.* Lang, 1 Macq. H. L. Cas. 451; Young *v.* Cuthbertson, *ibid.* 455; Elliott, Roads and Streets 1.

7 See 16 HARV. L. REV. 332.

8 See State *v.* Kansas City, etc., R. Co., 45 Ia. 139; Schwerdtle *v.* County of Placer, 108 Cal. 589; Commonwealth *v.* Coupe, 128 Mass. 63.

9 Post *v.* Pearsall, 22 Wend. (N. Y.) 425; 16 HARV. L. REV. 128.

10 69 J. P. 217.

11 Attorney-General *v.* Antrobus, *supra.*

12 Nichols *v.* State, 89 Ind. 298.

broad doctrine of prescription and the reasons of public policy supporting it are as easily applicable to the acquisition of any incorporeal right of use, convenience, or value to the public, as to the acquisition of any purely private rights. Yet it must be granted that although the presumed dedication (based often on estoppel) of cemeteries and springs is not infrequent,[13] cases are exceedingly rare in either country where the public has gained a prescriptive right in the nature of a *jus spatiandi*. It seems likely that the common law courts will continue to show a disinclination to extend such acquisition beyond the established cases of highways, parks and squares.

TOLLING OF STATUTE OF LIMITATION BY ONE OF SEVERAL OBLIGORS. — The doctrine that acknowledgment or part payment extends a debt or revives one barred, is a judicial engrafting upon the original Statute of Limitations of James I. It is now generally recognized that such payment or acknowledgment operates not as a waiver of the defense of the statute, continuing the cause of action, but as a fresh promise. Either view presents difficulty as to consideration, but the case must be regarded as a lingering example of moral consideration supporting a promise.[1] If, then, the theory is that of a new contract, there must exist circumstances from which an unequivocal promise can be inferred. Such a promise, therefore, can be made only by the party to be charged or his authorized agent.[2] Yet there has existed a great conflict, now partly allayed by statutes, as to the effect of payment by one of several persons having a community of interest. Thus, Lord Mansfield, in a leading case [3] now overruled by statute, held that payment by one joint obligor, for purposes of the statute, is payment by all; while the United States Supreme Court has reached an opposite result, concurred in by a majority of the states.[4] There is a similar diversity of views as to the effect of part payment by a partner after dissolution of the partnership. Here, too, regarding the dissolved partners merely as joint obligors, the majority of the states deny one authority to revive or extend a debt against others. Some, however, follow the early English authority; still others sanction only an extension, not a revival, while a few make notice to the creditors a determining factor. The prevailing rule, which has recently been adopted in several states by statute, seems sound. Whether one person has power to bind another by his promise, express or implied, is a question of fact in each instance, but from the mere relationship of joint obligors no such agency can be inferred.

It would seem that when the question arises through payments by one of several testamentary beneficiaries the same rule must guide, and part payment by one should affect only his own interest or that of those for whom he is authorized to act. Yet the English Chancery Division has recently held, in a case arising under a statute making a decedent's real estate assets in equity for simple contract debts, that part payment by a tenant for life of part of the estate bound persons who were both remaindermen and

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[13] Boyce *v.* Kalbaugh, 47 Md. 334; Larkin *v.* Ryan, 25 Ky. Law Rep. 613.

[1] See 16 HARV. L. REV. 517.
[2] Payne *v.* Slate, 39 Barb. (N. Y.) 634, 638.
[3] Whitcomb *v.* Whiting, 2 Doug. 652.
[4] Bell *v.* Morrison, 1 Pet. (U. S.) 351.